IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 157 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

GOVIND JAKHU & CO.

Appearance:

1. Civil Revision Application No. 157 of 2003

Mr.Uday Bhatt, A.G.P for Petitioner No. 1-7

MR KG SUKHWANI for Respondent No. 1

MR PR NANAVATI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/01/2004

ORAL JUDGEMENT

1. The petitioners herein are the original

defendants against whom the respondents herein had filed a suit being Regular Civil Suit no.41/1998 in the Court of Civil Judge, Anjar, (old number is Civil Suit no.308/1988. The trial Court by its judgment and decree dated 11-10-1989 decreed the said suit. Against the decree of the trial Court, the present petitioners herein preferred an appeal before the District Court at Gandhidham (Kutch). Since there was a delay in filing appeal, a separate application for condonation of delay was preferred being Civil Misc.Application no.363/2002. In the delay condonation application, certain grounds have been given for condonation of delay. As per the same, certain time was spent in some departmental correspondence. Ultimately, an application was preferred for condonation of delay of about 369 days that has occasioned in preferring such appeal. The learned Joint District Judge, Camp at Anjar (Kutch) by his order dated 21-1-2003 came to the conclusion that the Government was negligent in filing the said appeal. It is observed by the appellate Judge that the suit of the plaintiff is of the year 1988 and if the appeal is preferred after fifteen years, it is not possible to know as to when such litigation will come to an end.

2. On behalf of the petitioners, learned A.G.P. has cited certain judgments to substantiate the say that the Court should take liberal approach at the time of deciding delay condonation application. Learned Advocate Mr.Sukhwani has left the question of condonation of delay to the Court.

3. Considering the nature of the litigation, in my view, this is not a case where the appeal of the Government is required to be thrown away at the threshold without examining the same on merits. This Civil Revision Application is also not seriously opposed by the other side. Considering the facts and circumstances of the case, in my view, the delay in preferring such appeal is required to be condoned. Accordingly, this Civil Revision Application is allowed. The order of the trial Court passed below Civil Misc.Application no.363/2000 is quashed and set aside. Delay in preferring said appeal before the District Court is condoned. The District Court is directed to decide the main appeal on merits and the same may be disposed of as expeditiously as possible and preferably within six months from today. Civil Revision Application is accordingly allowed. Rule is made absolute with no orders as to costs.

(P.B.Majmudar,J.)

stanley-pbm.